



US Army Corps
of Engineers

Construction Bulletin

No. 96-9 Issuing Office: CEMP-CP Issue Date: 3/13/96 Exp. Date: 31 DEC 98

CEMP-C

Subject: Hazardous Waste Manifest Signature Policy and Procedures

Applicability: GUIDANCE

1. REFERENCES:

- a. ER 1180-1-6, Construction Quality Management, 30 Sep 95.
- b. ER 1110-1-263, Chemical Data Quality Management for Hazardous Waste Remedial Activities, 1 Mar 96.
- c. CEMP-RT memorandum dated 30 Apr 93, subject: Signatory Responsibility for Hazardous Waste Manifests and Related Documents - Policy Guidance
- d. EP 415-1-266, Resident Engineer Management Guide For HTRW Projects, dated 15 Dec 94.
- e. EP 200-1-2, Process and Procedures for RCRA Manifesting, dated 31 Mar 94.

2. PURPOSE This Construction Bulletin (CB) is a reissue of CB No. 93-6, 4 May 93, subject: Hazardous Waste Manifest Signature Policy and Procedures which establishes the policy regarding the signing of hazardous waste manifests and related documents. In addition, paragraph 6 of this CB clarifies several issues such as compliance with regulatory training requirements, authorization of USACE personnel to sign manifests, and the project specific supplement to the Quality Assurance (QA) Plan. This CB should be used as interim guidance until section 3.2h. of reference 1d "Manifests" is revised.

3. BACKGROUND. The Resource Conservation and Recovery Act (RCRA) addresses the "cradle to grave" management of hazardous waste. This includes the generation, storage, treatment, transportation and disposal of hazardous wastes. The Environmental Protection Agency (EPA) implementing regulations (40 CFR 262) require a generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal to prepare and sign a manifest, the EPA Uniform Hazardous Waste Manifest Form 8700-22A, which describes the hazardous waste in detail. The Department of Transportation (DOT) also requires a shipping document that describes the transported hazardous material to accompany the shipment to its final destination. Unless the receiving state or the state where the shipment has originated from has its own manifest, the EPA Uniform Manifest is used and satisfies both EPA and DOT requirements. EPA,

CEMP-CP**SUBJECT: Hazardous Waste Manifest Signature Policy and Procedures**

Department of Labor/Occupational Safety and Health Administration (OSHA), and DOT regulations further require various aspects of contingency planning by hazardous waste generators.

4. GENERAL. With the exception of hazardous waste generated from facilities under the jurisdiction of USACE, or facilities operated and maintained by USACE, USACE is not considered to be the owner or generator of the hazardous waste it transports as part of the response activities. The customer agency is the generator for purposes of execution of the hazardous waste manifest. However, due to logistic complexities, a customer may not be able to provide an individual to sign hazardous waste manifests in a timely manner. The customer may then request USACE to sign project manifests on their behalf. The EPA regulations (40 CFR 262) makes clear that generators may have an agent act on their behalf in signing manifest forms. Specifically the instructions say, "Generators may preprint the words, "on behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications." As explained in the Federal Register Notice on Oct 1, 86 (51 Fed. Reg. 35192), EPA did not intend to impose personal liability on the individual who actually signs the certification. Further, EPA clarified that "employees or other individuals may sign the manifest certification for a generator who is a legal entity, such as a corporation." This statement makes clear that the generator may permit persons on-site to sign for the generator, so long as the signer has clear authority from the generator to do so.

5. POLICY.

a. As the leader in DOD's full service environmental restoration efforts, USACE role is expanding as a result of legislation, evolving missions, and customer needs. Commensurate with this role, it is USACE goal to develop and implement practices that will facilitate the continuation of quality comprehensive environmental services. In keeping with this goal, it is USACE policy, if requested by its customers, to execute on behalf of those customers hazardous waste manifests and related documents when not precluded by state statutes or regulations. So far, two of our customers have requested USACE assistance in signing manifest forms on their behalf, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA)/ Farmers Home Administration (FmHA)*. In the case of these two customers, HQUSACE has agreed to execute the manifests as their agent.

* The USDA program is now represented by four agencies which have replaced the Farmers Home Administration (FmHA). USDA split the program formerly managed by FmHA between four new agencies. Until all procedural matters between USACE and the new agencies are formalized, you must contact the customer and assure that written authorization to sign manifest and related documents is received from the agencies prior to the execution of any of these documents on their behalf.

CEMP-CP

SUBJECT: Hazardous Waste Manifest Signature Policy and Procedures

b. With regard to manifesting activities at sites or facilities where USACE is considered the owner/generator of the hazardous waste or responsible agency, e.g., Civil Works facilities or Defense Environmental Restoration Program - Formerly Used Defense Sites (DERP-FUDS), manifest execution and related responsibilities will be performed by USACE.

c. With regard to DERP-Installation Restoration (IR) and Base Realignment and Closure (BRAC) environmental restoration activities, manifest execution and related responsibilities ordinarily belong to the customer (i.e., the installation or the base.)

d. When the additional cost of sending a qualified USACE representative to a remote location for a small clean up project is unwarranted, the option of requiring the on-site contractor to sign the manifests on behalf of the generator is permitted and should be considered. This option can only be exercised on a project specific basis after written authorization of the customer and approval of the Chief, Construction Division at the executing district. For FUDS projects, only the approval of the Chief, Construction Division at the executing district is necessary. Requirements for contractor to sign manifests must be approved as above noted prior to the solicitation process and be incorporated into the technical provisions of the contract solicitation used in competing the work.

6. PROCEDURES. Where USACE personnel execute Uniform Hazardous Waste Manifest forms and related documents, procedures will be adopted by the districts, operating Major Subordinate Commands (MSCs), and Centers as follows:

a. In the Generator's Name and Mailing Address box (block #3) on the Uniform Hazardous Waste Manifest form, USACE authorized personnel shall enter the following information: "Environmental Protection Agency/Superfund Program," "Department of Agriculture/Farmers Home Administration," or "DOD (DERP/FUDS)" as appropriate followed by "c/o" and then the name and address of the USACE office that manages the returned manifest forms. In the generator's certification box (block #16), the authorized USACE employee would then sign his or her name, followed by "USACE" after writing or printing the phrase "On-behalf of the Environmental Protection Agency" or "On behalf-of the Department of Agriculture/ Farmers Home Administration" as appropriate. On FUD sites, USACE personnel should follow the same procedure after typing or printing the phrase "On behalf-of the Department of Defense." All other manifest related documents executed by USACE members on behalf of a customer shall be executed by signature followed by USACE after writing or printing the phrase "on behalf of the (name of the customer)."

CEMP-CP

SUBJECT: Hazardous Waste Manifest Signature Policy and Procedures

b. On facilities where USACE is the "owner/generator" of hazardous wastes or is the "Responsible Party," USACE personnel shall enter in block #3 on the manifest form "U.S. Army Corps of Engineers," followed by the name and address of USACE office that manages the returned manifest forms. In the generator's certification box (block #16), the USACE authorized employee would sign his or her name after typing or printing the phrase "On behalf of the U.S. Army Corps of Engineers."

c. USACE personnel authorized to execute manifest forms and related documents shall assure compliance with all reporting requirements (e.g., exceptions reports, biennial reports and state reports) as well as follow-on requirements, including the assembly and retention of all appropriate documentation and certifications.

d. USACE personnel executing hazardous waste manifests and related documents must assure that USACE is authorized by its customers to execute hazardous waste manifests and related documents on their behalf prior to such documents being executed. This authorization, as well as a customer statement retaining all generator responsibilities, is most appropriately incorporated as a specific provision within a Memorandum of Agreement, Inter-Agency Agreement, or correspondence signed by a recognized agency official*. If state statutes or regulations do not permit USACE to sign such documents on behalf of the customer, the Resident Engineer (RE) or other designated USACE representative is to contact the customer for further guidance.

e. All USACE members executing hazardous waste manifests and related documents must receive appropriate training before executing such documents. Training records fulfilling all regulatory requirements must be documented and must be maintained onsite in the event of a regulatory inspection. The minimum required training is specified in the following regulations:

(1) Department of Labor/OSHA, 29 CFR 1926.65 (Construction). Pursuant to OSHA regulations, personnel conducting field activities at hazardous waste sites are required to have initial and annual training refreshers. USACE, through the PROSPECT training program, offers the initial 40 hr PROSPECT course "Safety and Health for Hazardous Waste Sites" Course Control Number 351). The 8 hr OSHA refresher could be arranged through outside sources or by attending the "Safety and Health for Hazardous Waste Sites, 8 hr Refresher" (766 Exportable).

* HQUSACE Office of Counsel advised that EPA's letter of 18 Oct 90 (a copy of this letter is included in the RE Management Guide for HTRW Projects) requesting and authorizing USACE to execute and certify manifest forms and related documents on their behalf is legally sufficient and that no further documentation or individual project authorization is necessary so long as state statutes or regulations do not preclude USACE personnel from signing manifests on behalf of EPA.

CEMP-CP

SUBJECT: Hazardous Waste Manifest Signature Policy and Procedures

(2) Department of Transportation (DOT), 49 CFR 173.1 and 49 CFR 172.700 (Subpart H-Training). Personnel that perform functions involving the transportation of hazardous materials are required to have initial training and a biennial refresher in accordance with DOT regulations. The HTRW CX in coordination with the Huntsville Training Directorate, has developed a 36 hours PROSPECT course "Hazardous Waste Management and Manifesting" (Course Control Number 223) which integrates DOT and RCRA initial training requirements and covers USACE policy and procedures. Also an 8 hour refresher course on "Waste Manifesting DOT Refresher Training and Certification" which meets the DOT mandatory biennial training requirement is now available through the PROSPECT Program (Course Control Number 429). These courses continue to be highly rated by most trainees and are strongly recommended by HQUSACE to personnel who are in need of such training.

(3) Environmental Protection Agency (EPA), 40 CFR 262.34 and 40 CFR 265.16 (RCRA requirements). Personnel that manage hazardous waste for the purpose of shipment or that conduct hazardous waste activities at Treatment, Storage, or Disposal (TSD) facilities are required to have initial training on contingency planning and function specific waste management procedures (such as manifesting). An annual review of initial training material is also required. The substantive requirements of the initial training under these standards are met by the initial training under OSHA and DOT. The annual review requirement is met by the OSHA 8 hr refresher combined with onsite review and compliance with the project specific Site Safety and Health Plan (SSHP) and project specific work plans. The DOT refresher further enhances this requirement on a biennial basis. Therefore, a specific stand alone annual review addressing 40 CFR 265.16 is not necessary.

f. Only USACE members formally designated and authorized by a MSC or district commander/deputy commander shall be allowed to execute hazardous waste manifests and related documents. The authorization letter should identify that the individual is within his/her scope of employment when executing manifests and related documents. Based on communication with the field, it appears that this formal designation letter of authority for manifest signature is not occurring within all districts or within the appropriate internal functional organizations of an individual district. In order to document appropriate training and the scope of an individual signature authority, a nomination and authorization procedure must be implemented. All persons nominated to be manifest certifying officials must have completed the required training and obtained certification. The nomination package should contain a one page summary of the person's training and experience in HTRW and manifesting. The nomination package should also have the authorization letter (to be coordinated with the local counsel) ready for signature. The authorization letter must clearly state that the execution of manifests and related documents are within the scope of the individual official duties. The nomination should further provide information that the person has satisfactorily performed as a USACE employee.

CEMP-CP

SUBJECT: Hazardous Waste Manifest Signature Policy and Procedures

g. Where USACE members are executing hazardous waste manifests and related documents, the contract under which the removal or remediation is being performed must contain supporting chemistry-related requirements and procedures. These items are imposed by the specifications and addressed by the contractor in a document known as the "Chemical Data Acquisition Plan" (see reference 1b). These plans are site specific guidance for sampling and analyses. They address among other things, laboratory activities, chemical data documentation, equipment, sampling documentation, quality control, sample custody and shipment, analytical methods and document preparation. The project specific supplement to the QA Plan, developed by the Resident Engineer in accordance with reference 1a, must define the USACE quality assurance role in the manifesting process. Area and Resident Engineers are encouraged to periodically request or formalize a review (by qualified in-house project support staff such as regulatory specialists, chemists, industrial hygienists or the HTRW CX) of project specific transportation and disposal related documents prior to signature. This is especially true in the case of a large and variable number of waste streams.

h. Newly awarded contracts such as the Total Environmental Restoration Contracts (TERC) now contain a requirement that hazardous waste manifests and related documents to be executed by USACE members or the customer be supported by contractor submittals prepared, reviewed, and approved by an authorized representative of the contractor. The contractor's authorized representative shall also certify that packaging, labeling, marking and placarding of the waste meet all applicable federal and state regulations, and shall also certify as correct, Land Disposal Restriction Notifications and Certifications, Waste Profile Sheets, and related documents before providing the documents to USACE. Any future contracts which will include the transportation and disposal of regulated material must contain similar requirements.

7. This CB has been coordinated with the following HQUSACE organizations: Environmental Restoration Division (CEMP-RT); Office of the Chief Counsel (CECC-C); and Operations, Construction and Readiness Division, Directorate of Civil Works (CECW-OC).


CHARLES R. SCHROER
Chief, Construction Division